

Motorola v. TiVo, No. 5:11-cv-53 (E.D. Tex.)
Chart of Motorola and TWC's Supplemental Objections to TiVo's Trial Exhibits

Exhibits	Motorola's Objection Explanation	TiVo's Objection Response
142, 653, 654, 2351, 239, 225	<p>1. Exhibits relating to TiVo's prior and ongoing litigations: MIL No. 1, FRE 402/403, 802</p> <p>TiVo is attempting to create an inference of infringement in this case by introducing multiple exhibits relating to its past litigation with EchoStar and other prior cases. Its list includes the EchoStar settlement agreement – which is subject to Plaintiffs' Motion in Limine No. 1 – as well as TiVo's complaint in its ongoing litigation adverse to Cisco. TiVo also seeks to introduce documents and emails discussing prior litigations between TiVo and third parties, such as AT&T and Verizon.</p> <p>As discussed in Motorola and TWC's Motion <i>in Limine</i> No. 1, these exhibits should be excluded as irrelevant and unfairly prejudicial, and as inadmissible hearsay. Fed. R. Evid. 402, 403, 802. TiVo should not be allowed to substitute evidence of its prior claims of infringement for evidence on liability and damages in this case. In particular, the admission of exhibits relating to the EchoStar litigation will severely prejudice to Motorola and Time Warner Cable by suggesting to the jury that they should reach a similar verdict here based on the earlier outcome in an unrelated case, rather than the evidence presented at trial. Additionally, TiVo should not be allowed to compound the unfair prejudice by not only introducing documents from prior litigations, but also third-party commentary about those earlier cases.</p>	<p>TiVo incorporates its general response to Motorola's objection 1 contained in Exhibit B to Dkt. No. 486 herein by reference.</p> <p>Additional exhibits TiVo TX-0142, 0653, 0654, 2351, 0239, and 0225: All of these exhibits are presentations created by TiVo or Motorola relating to business negotiations between TiVo and Time Warner Cable or TiVo and Motorola. In some cases these presentations involve discussions of on-going or past TiVo litigations, but the presentations also include DVR business updates, talking points among the parties, and other topics of discussions.</p> <p>The documents, and the references therein, including the references to TiVo's past suits enforcing its patents, are highly relevant to several issues pending in this case, including willfulness, inducement, and damages. These documents are party admissions (Motorola presentations) and business records.</p>

Exhibits	Motorola's Objection Explanation	TiVo's Objection Response
156, 151, 175	<p>8. Exhibits concerning cableCARD, tuning adapting, and switched digital video technology: FRE 402/403</p> <p>TiVo's exhibit list contains numerous documents regarding the development of cableCARD, tuning adaptor, and switched digital video technology that are not relevant to the parties' claims or defenses in this case. These documents include correspondence between TiVo, Motorola, and Time Warner Cable, as well as internal communications, regarding CableCARD, tuning adaptor and switched digital video technology. These documents are not relevant to infringement or invalidity in that they do not relate to the technology of the asserted patents or the accused functionality on any accused TiVo DVR. Likewise, the development of these technologies is not relevant to any issue relating to the parties' contentions on reasonable royalty or lost profits damages. Thus, these documents should be excluded as irrelevant and likely to cause unfair prejudice.</p>	<p>TiVo incorporates its general response to Motorola's objection 8 contained in Exhibit B to Dkt. No. 486 herein by reference.</p> <p>Additional exhibits TiVo TX-0156, 0151: These documents do, in fact, relate to the exact technology and products involved in this case: TiVo's, Motorola's, and TWC's DVRs. Moreover, Motorola has confirmed its intention to raise these technologies at trial.</p> <p>Exhibit 175 has been withdrawn.</p>
155	<p>10 (f) Documents regarding non-accused, third-party technology: FRE 402/403</p> <p>TiVo seeks to introduce a voluminous collection of documents relating to third party products, pricing, and financial data. These third parties include Comcast, Cox, Charter, Flextronics, DirecTV, ReplayTV, Verizon, SonicBLUE, Dish, and AT&T. These documents set forth information that is not relevant to any accused product in this case, and as such, are likely to confuse and mislead the jury on both liability and damages issues.</p>	<p>TiVo incorporates its general response to Motorola's objection 10(f) contained in Exhibit B to Dkt. No. 486 herein by reference.</p> <p>Tx TiVo 155 is an internal Time Warner Cable email chain discussing implementation of TiVo's DVR services on Virgin boxes. Motorola is expected to argue that TiVo's functionality was hard to make compatible with Motorola boxes. This document illustrates that TiVo compatibility is not an issue when properly supported.</p>
157, 1211, 1212, 2332,	(11) Irrelevant and Prejudicial Documents: FRE	TiVo TX-0157 is internal TWC discussion of TiVo-

Exhibits	Motorola's Objection Explanation	TiVo's Objection Response
2299, 2348	<p>402/403</p> <p>TiVo seeks to introduce documents that are not relevant to the issues at dispute in this litigation and whose probative value is outweighed by the prejudice to Motorola and TWC. TX-284 and 2344 relate to unclaimed features of TiVo's DVR such as the user interface trick play functionality. TX-2330, TX-2331, TX-1211, TX-1212, TX-2332, TX-2299, and TX-2348 all relate to business negotiations between Motorola and TiVo on a potential business deal not relevant to any issue in this litigation. These documents discuss third party intellectual property rights that are not at issue in this litigation and likely to be confusing and misleading to the jury.</p>	<p>TWC business negotiations regarding providing TiVo functionality on a TWC set top box.</p> <p>TiVo TX-1211-1212, 2299, 2332 and 2348 are communications between TiVo and Motorola or internal to Motorola regarding putting TiVo software on Motorola DVRs and selling the combined product. While indemnification is discussed, this document is focused on Motorola's proposed terms for TiVo relating to this combined product. TiVo TX-2332 mentions in general a IP litigation issue after the filing of this lawsuit.</p> <p>These documents are all relevant to the issues in this case, including willfulness and damages.</p>